

98-244

MEMORANDUM

To: Stein Buer/Michael Heaton
From: Cynthia Koehler
Date: September 25, 1998
Re: Assurances

This is a quick summary of some of our thinking on the assurances/entity issue.

Basic Assurances Needed For The Ecosystem Restoration Program

CALFED has predicated a great deal on its "assurances package" suggesting to all stakeholders that once a deal is struck, the assurance package will provide program equity and ensure that program goals will be met -- or not met -- to the same degree. EWC has approached the ecosystem restoration assurances issue by asking: "What will it take to ensure that the performance standards established by CALFED will in fact be achieved over time?" Given the nature of the ERP, the following assurance mechanisms at a minimum will be needed:

1. Environmental Water. Water will be required for the restoration program to succeed, almost certainly in amounts above the current regulatory baseline. Since currently available "assurances" [e.g., CVPIA, CWA water quality standards] have not been able to ensure that even the baseline level of water is actually provided to the environment on a reliable basis, additional mechanisms will be required including at a minimum:

- an instream water right
- a new type of statutory dedication of water
- a functioning water market

2. Environmental Money. The eco-program presumes little if any regulatory reallocations of water or land and is predicated instead on the assumption that large amounts of funding will be available, *inter alia*, to do habitat restoration projects, conduct monitoring and adaptive management and buy water. This will require some combination of dedicated federal, state and water user money. The more these funding streams are vulnerable to political whim, the less certain they will be and the less certain it is that the program will be effectively implemented.

3. An Implementing Body. The ERP/Strategic Plan is an ambitious undertaking requiring a vast array of tools and authorities. In order to "assure" the success of this Plan, some body must have primary authority for Plan implementation and adaptive management. We are aware of no single agency (or other entity) with the full range of tools and authorities available to it to successfully undertake this role. Nor is it likely that the performance standards could be met merely through a coordinated effort of existing agencies pooling their existing authorities; "assuring" the ecosystem program will require a full-time staff with a clear mandate to achieve these objectives and all of the necessary, but appropriate, tools to do so. (I have attached a briefing paper originally prepared for EWC that outlines the case for a new entity.)

Political Feasibility And Program Equity

No doubt the assurance mechanisms listed above (and others not listed) peg the political infeasibility meter. But this merely reflects the difficulty of accomplishing CALFED's program with a high degree of certainty. If CALFED cannot provide such assurances for the eco-program, this must have a concomitant affect on the assurances for the water supply reliability and other program elements. If CALFED stands for a different premise -- i.e., CALFED will assure only those parts of the program as are politically feasible, but as long as the other programs are politically feasible they will go forward -- then a lasting public consensus is probably unattainable.

The political feasibility issue goes to the heart of CALFED's assumptions about what it is capable of promising to the parties. It does not appear to us that anything much less than the assurances mechanisms set forth above can reasonably be expected to assure the objectives of the ecosystem restoration program. To the extent that these or other assurances are indeed politically infeasible, we may have to face the reality that CALFED simply cannot provide more than very limited assurances that the ecosystem program will be fully implemented (let alone successful). This raises the question of whether and to what extent the water users are entitled to assurances regarding the program elements of interest to them -- the "no surprises" issue in particular.

It may be appropriate to ask the environment to take it on faith that funding, water and implementation will all occur with something less than certain assurances upfront -- but **only** if the water supply reliability elements are subject to: (1) the same limited assurances; and (2) a phasing structure that prevents the reliability element from going forward in the event that reasonable progress on the eco-program does not occur.

Phasing, Linkages and "Bundling"

We agree with the basic premise that all program elements are more likely to be implemented over time if they are linked with one another in a phased approach. However, recent discussions about linkages are problematic; there seems to be developing a view that progress can be measured in terms of money spent or permits issued.

The reality is that the ecosystem restoration and water supply reliability programs cannot be compared on this basis -- permits for restoration projects do not equate to permits for new reservoirs. Moreover, progress in meeting ecosystem performance standards cannot be measured in 2-year increments. Nor is it reasonable to use spending as a surrogate for meeting program goals in light of the massive amounts of money spent on eco-efforts in other areas that have failed. Phasing and linkages can be meaningful as a way of ensuring equitable program progress if we are measuring how well the program is meeting performance standards, rather than comparing how much money is spent or how many permits are issued.

Thanks for taking the time to talk with me today. I hope this is useful to you. Please do not hesitate to call if you have any questions.